

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

APRIL T.,

Claimant,

vs.

**SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,**

Service Agency.

OAH Case No. L 2005070947

**DECISION GRANTING
CLAIMANT'S APPEAL**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 17 and November 2, 2006, at the South Central Los Angeles Regional Center located in Los Angeles, California.

Claimant was represented by Willie Woods on the first day of hearing, and by Michelle Levesque and Jenna Jewert on the second day of hearing, all of whom are Children's Social Workers with the Los Angeles County Department of Children and Family Services (DCFS). Claimant's grandmother was also present on the first day of hearing.¹

The South Central Los Angeles Regional Center (SCLARC or Service Agency) was represented by Julie A. Ocheltree, Esq., Enright & Ocheltree, LLP. Ms. Johanna Arias, SCLARC Fair Hearings Coordinator, was also present for both days of hearing.

The matter was submitted for decision on November 2, 2006.

ISSUE

Does Claimant have a developmental disability (mental retardation and/or autism), from which she is substantially disabled, making her eligible for regional center services?

¹ Claimant and her family are referenced in a manner intended to protect their privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency exhibits A1, A2, and B-Y; Claimant exhibits 1 and 2.

Testimonial: Ann Walker, Ph.D.; Ehab Yacoub, M.D.; Peter Adler, Ph.D.; Willie Woods, C.S.W.; and Claimant's grandmother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 12-year-old female on whose behalf a request was made for regional center services from the Service Agency on the bases of mental retardation and/or autism.

2. By a letter dated March 15, 2005, the Service Agency denied the request for eligibility, stating its staff had concluded that Claimant does not suffer from any of the five qualifying developmental disabilities, but that, instead, she has a diagnosis of schizophrenia, which is not a qualifying condition.

3. A Fair Hearing Request on Claimant's behalf was submitted, on July 21, 2005, which appealed the Service Agency's denial of eligibility and requested the hearing that ensued.

4. On August 24, 2005, Mr. Woods and Ms. Arias conducted an "informal meeting" regarding the eligibility request. The Service Agency thereafter reiterated its previous denial by a letter dated August 29, 2005, for the same reasons stated above.²

5. As discussed in more detail below, Claimant had previously requested regional center services from the Service Agency in 2000, which was similarly denied.

Claimant's Early Development and Background

6. Claimant's birth and early developmental history is largely unknown. Claimant was in the custody of her mother until 1998. During that time, Claimant lived in an unsafe and neglectful environment, and was the victim of physical and sexual abuse. Claimant and her two siblings were rescued from that situation by her aunt in 1998.

² The delay between the filing of Claimant's Fair Hearing Request and the hearing was due to continuance requests by the parties to accommodate personal emergencies and to facilitate further evaluations of Claimant.

7. Claimant is now a ward of the juvenile dependency court. Claimant and her two siblings reside with their maternal grandmother, who serves as their foster mother. Claimant's mother, who is trying to rehabilitate herself, occasionally visits her children under supervision. Claimant's father is not currently involved with the family. Claimant's current environment is safe, healthy and loving. She is making progress in many areas.

8. Claimant is currently in elementary school and receives special education services through the Compton Unified School District (CUSD). The CUSD has classified Claimant as a "mild to moderate" special education student. Recent school records were not presented, so Claimant's current special education placement cannot be determined.

Prior Assessments of Claimant

9. In November 1999, as part of a special education assessment of Claimant, CUSD Psychologist Eugene Ray, Jr. completed a Psycho/Educational Report for Claimant. In the report, Mr. Ray noted that Claimant's grandmother had reported to him that Claimant "frequently talks to her self, often has conversations with inanimate objects and 'flashback' conversations." Mr. Ray administered tests to Claimant and obtained her historical information from her grandmother and classroom teacher. Mr. Ray summarized that Claimant was performing significantly below average intellectually; had psychological deficits in attention and processing; and was performing significantly below age expectations in math, reading and spelling. He also described Claimant's adaptive skills and socialization skills as significantly below age expectations. Mr. Ray's report is vague as to the types of tests used and results obtained. One test referenced was the Adaptive Behavior Inventory (ABI). According to the evidence presented by the Service Agency during the hearing, this test was not appropriate for Claimant given her age and minority status. Thus, the Service Agency expert witnesses question the validity of the test and the results obtained. Based on that evidence, no findings are made regarding the results of the ABI test.

10. In the final section of Mr. Ray's report, he recommends instructional services aimed at Claimant's cognitive delays, such as breaking down tasks and organizing them into teachable units, re-arranging tasks from simple to complex, using explicit step-by-step instruction, etc. He made no recommendations expressly aimed at any psychiatric or emotional disorder.

11. In August 2000, Claimant was referred to the King/Drew Medical Center for a psychosocial assessment, which was conducted by psychologist Catherine M. Gonzalez, Ph.D. Dr. Gonzalez gave Claimant a number of tests, observed her behavior, and received Claimant's history from her maternal grandmother. Some part of Claimant's history recited to Dr. Gonzalez gave her the impression that Claimant had been previously diagnosed with autism and attention deficit disorder; however, the record does not indicate that Claimant had been previously diagnosed with autism. Claimant's history also included that she was then seeing a therapist; and that although a psychiatrist had prescribed Ritalin in December of 1999, Claimant's grandmother shortly later stopped giving the medication to Claimant. Dr. Gonzalez interpreted the results of the Vineland Adaptive Behavior Scale (Vineland) test as

showing a significant level of maladaptive behaviors characteristic of autism and attention deficit hyperactive disorder (ADHD). Other tests were interpreted as consistent with a hyperactivity problem. Dr. Gonzalez concluded that her work confirmed the “previous diagnosis” of autism and ADHD. Dr. Gonzalez recommended that Claimant be referred to a regional center for services. She also recommended that Claimant resume psychotropic medication, apparently in relation to Claimant’s ADHD. Dr. Gonzalez’s diagnosis of autism is not well supported or explained in the report. Moreover, the tests administered to Claimant by Dr. Gonzalez were not established to be properly used to screen for autism.

12. On September 1, 2000, the Service Agency conducted an intake assessment of Claimant, after she had been referred there by a social worker who suspected that Claimant was mentally retarded. During that intake process, information was obtained from Claimant and her maternal grandmother, Claimant’s behavior was observed, and her medical records were reviewed.

13. The Service Agency thereafter referred Claimant to psychologist Carol Kelly, Ed.D., for a psychological evaluation, which was conducted on September 1 and 19, 2000. Dr. Kelly administered a number of tests, took a history from Claimant and her maternal grandmother, observed Claimant’s behaviors, interviewed Claimant’s social worker, and reviewed Claimant’s records with the Service Agency. Using the Leiter International Performance Scale (Leiter), Claimant’s IQ was assessed to be 74, which was described as falling within the borderline range of low average intelligence and just above the upper limits of mild retardation. However, Dr. Kelly felt the score was a lower estimate of Claimant’s true intellect because she had difficulty focusing her attention on the test. Claimant’s adaptive abilities based on results from the Vineland test were scored to be 68 in communication (described as mildly delayed), 59 in daily living skills and 55 in socialization (both described as “delayed” due to emotional factors). Dr. Kelly concluded that Claimant was not mentally retarded because she demonstrated at least borderline intellectual abilities. Dr. Kelly did diagnose Claimant with ADHD, based on her observation of Claimant’s impulsivity and poor attention, as well as Claimant’s prior history. Dr. Kelly also concluded that Claimant was not autistic, because she did not present as having autistic characteristics. Dr. Kelly believed a more appropriate diagnosis was Reactive Attachment Disorder of Infancy or Early Childhood, given the physical and sexual abuse inflicted on her when she was very young. Dr. Kelly believed that diagnosis better explained Claimant’s presentation of “markedly disturbed and developmentally inappropriate social relatedness” However, the conclusion regarding autism is not well supported or explained in the report. Moreover, the tests administered to Claimant were not established to be those typically used to screen for autistic tendencies.

14. As part of the Service Agency’s initial intake process, Staff Psychologist Peter Adler contacted Claimant’s then treating psychiatrist, Dr. Carrasquillo, in December 2000. Dr. Carrasquillo told Dr. Adler that she could not make a diagnosis of autism for Claimant, but that she could definitely make a diagnosis of Pervasive Developmental Disorder Not Otherwise Specified (PDD NOS).

15. Based on the above, the Service Agency's Interdisciplinary Assessment Team concluded on a date not established that Claimant was not eligible for regional center services. Claimant did not appeal that initial denial.

The Service Agency's Most Recent Assessment of Claimant

16. On February 16, 2005, the Service Agency conducted an updated intake assessment of Claimant, as a result of DCFS's request to re-open her case. Claimant and her grandmother were again interviewed and observations of Claimant's behaviors again noted. At that time, Claimant was ten-years-old and was in the fifth grade. During the interview, Claimant stated that she heard a voice in her head daily, which told her to do bad things. She also reported seeing spiders. Claimant's grandmother also reported that she had observed Claimant talking to herself on a regular basis, and that Claimant had attempted to strangle herself with a jump rope in December 2004.

17. A. The Service Agency referred Claimant to clinical psychologist Ann L. Walker, Ph.D., for a psychological evaluation, which was conducted on February 16, 2005. Dr. Walker administered a number of tests, took a history from Claimant and her grandmother, observed Claimant's behaviors and reviewed a prior assessment.

B. During the course of the interviews, and the administration of a Mental Status Exam, Claimant reported hearing a man's voice in her head that told her to bring objects like scissors and knives into her bed. Claimant's grandmother confirmed that she had to be careful with items like that around Claimant. Claimant also reported visual hallucinations, such as seeing spiders. During the interview, Dr. Walker also observed Claimant looking off into the corner of the room and mumbling "as if there were someone in the corner that she was talking to." However, Claimant denied having any such auditory or visual hallucinations at that time.

C. Using the Leiter-Revised test (Leiter-R), Claimant's full IQ was scored to be 87, which falls in the low average range of intellectual functioning. The results of the Wide Range Achievement Test-Third Edition (WRAT-3) were described by Dr. Walker as showing that Claimant's academic skills were at the kindergarten level and dramatically below her expected level given her cognitive abilities. Claimant's adaptive abilities were measured by the Vineland test to be 36 overall, 48 in communication (described as being in the moderate range of impairment), 47 in daily living skills and 42 in socialization skills (both scores described as being in the moderate range of impairment). Dr. Walker described Claimant's self-help skills as being in the severe range of impairment.

D. Dr. Walker also administered two commonly accepted tests used to screen for the presence of autistic tendencies, i.e. the Gilliam Autism Rating Scale (GARS) and the Autism Diagnostic Observation Schedule, Module 2 (ADOS-2). Claimant's quotient on the GARS was 58, described as being in the range showing a very low probability of autism. Claimant's total score on the ADOS-2 was 7, which Dr. Walker similarly described showing a low probability of autism.

E. Based on the above, Dr. Walker diagnosed Claimant with Schizophrenia, Paranoid Type, mainly due to the reported auditory and visual hallucinations and Claimant's observed behavior during the interview when she appeared to be talking to somebody else in the interview room. Dr. Walker concluded that the schizophrenia is likely to have depressed Claimant's academic, social and adaptive abilities.

F. Dr. Walker ruled out autism, due to the low scores on the autism screening tests and the lack of observed behaviors necessary to meet the minimum criteria necessary for a diagnosis of autism pursuant to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), published by the American Psychiatric Association. In describing Claimant as having low average cognitive skills, and by making no Axis II diagnosis pursuant to the DSM-IV, it is assumed that Dr. Walker did not find Claimant was mentally retarded.³

18. On March 15, 2005, Dr. Ehab Yacoub, a psychiatrist who consults with the Service Agency, reviewed Claimant's Service Agency records and made a psychiatric note in Claimant's chart. In that note, Dr. Yacoub agreed with Claimant's prior Service Agency diagnoses described above and stated that depression and post-traumatic stress disorder were also possible given Claimant's past history of abuse and neglect. His note contains very little support or explanation for those findings. Dr. Yacoub concluded that Claimant was not eligible for regional center services, because she was not autistic, mentally retarded, or in the "fifth category."⁴

19. On March 14, 2006, Dr. Yacoub saw Claimant and her grandmother for a psychiatric evaluation. At that time, Claimant reported to Dr. Yacoub that she still heard a voice that "was scary." Dr. Yacoub thought Claimant acted overly suspicious during the evaluation and seemed paranoid, so much so that he did not believe she was psychiatrically stable at that time. Dr. Yacoub wrote a note to be included in Claimant's file reiterating his diagnosis of Schizophrenia (Paranoid Type) and ADHD for Claimant. Dr. Yacoub referred Claimant at that time to the King/Drew Medical Center for psychiatric treatment.

20. Dr. Yacoub testified that, in his opinion, Claimant would benefit from psychotropic medications because she has a mental disorder. He also opined that Claimant's mental disorders are impairing her social, academic, and cognitive performances.

21. On March 15, 2005, the Service Agency's Interdisciplinary Assessment Team concluded that Claimant was not eligible for services, as described in Factual Finding 2.

³ According to the DSM-IV, Axis II covers diagnoses of personality disorders or mental retardation.

⁴ The "fifth category" is one of the five categories of eligibility, and it is described as a condition similar to mental retardation or which requires treatment similar to that required by those who are mentally retarded.

22. Dr. Adler also testified during the hearing, mainly offering criticisms of the evaluations obtained by Claimant's representative, which are discussed in more detail below.

23. A. Dr. Walker also testified at the hearing. She opined that the Leiter-R test she administered to Claimant better accounted for her weak verbal skills and therefore produced a score that was more reliable than cognitive testing done at the King/Drew Medical Center. Dr. Walker testified that Claimant's scored IQ of 87 was well above the threshold for mild retardation. She also opined that the serious impairment of Claimant's adaptive skills were due to her schizophrenia and not an impaired intellect. For those reasons, she opined that Claimant was not mentally retarded.

B. Dr. Walker also described the diagnostic criteria that must exist for a diagnosis of autism pursuant to the DSM-IV, and persuasively described how Claimant did not meet the criteria for a diagnosis of autism. Most important to her conclusion ruling out autism for Claimant was that only one of the required two minimum criteria for social impairment was present, in that she believes Claimant is not markedly impaired in eye contact, the spontaneous sharing of interests, or reciprocity. Dr. Walker also persuasively explained how the results of her autism screening tests were inconsistent with an autism diagnosis.

Assessments and Related Information Obtained by Claimant

24. On December 2, 2004, King/Drew Medical Center clinical psychologist Kimberly Hagen, Ph.D., conducted a psychosocial assessment of Claimant, pursuant to a referral made by the DCFS. Dr. Hagen interviewed Claimant and her grandmother, observed Claimant's behaviors and administered a test designed to assess child behaviors and attitudes (the Achenbach test). In her report of the same date, Dr. Hagen acknowledged that her evaluation was limited and would not support any definitive diagnosis of a developmental disorder. She expressed doubt over the propriety of an autism diagnosis, because she did not believe Claimant displayed an inability to interact reciprocally, poor eye contact, poor communication skills or adherence to fixed routines. Although she recognized Claimant had significant adaptive limitations suggestive of mental retardation, Dr. Hagen concluded that her lack of formal cognitive assessment precluded such a diagnosis by her at that time. However, based on the history given to her of Claimant's flat development and adaptive impairments, Dr. Hagen suspected that Claimant was mentally retarded. She strongly recommended that Claimant be comprehensively evaluated by the Service Agency.

25. A. Claimant was referred back to Dr. Hagen in April 2005 for a psychological assessment in order to assess her current level of cognitive and emotional functioning.

B. Dr. Hagen again interviewed Claimant and her grandmother, administered several tests, observed Claimant's behaviors over the course of four different sessions in April and May of 2005, reviewed Claimant's records, and reviewed information obtained from Claimant's fifth grade teacher and Mr. Woods. She thereafter wrote a report, dated May 19, 2005.

C. Using the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), Claimant was scored to have a Full Scale IQ of 51, which was described as falling in the extremely low range of functioning. Dr. Hagen described Claimant's score on the NEPSY (described as a developmental neuropsychological assessment test) as being similar to the WISC-IV, in terms of being indicative of low range functioning in memory skills and phonological processing. The Vineland was also administered, but the scores were not provided; Dr. Hagen only summarized the scores in communication, daily living and socialization as falling in the low to below average range and as supporting observations by others that Claimant needs constant supervision and assistance in those areas. Dr. Hagen gave Claimant a score of 45 in her Axis V diagnosis pursuant to the DSM-IV, which she described as demonstrating a "serious impairment in social and school functioning."

D. Based on the above, Dr. Hagen diagnosed Claimant with Autistic Disorder, because she believed Claimant displayed impaired social development, communication and had restricted interests and activities. That diagnosis is not persuasive, for the following reasons. Dr. Hagen made cursory reference to the diagnostic criteria for autism from the DSM-IV which she believed Claimant met. She administered no tests commonly known to screen for autistic tendencies, such as the GARS, CARS or any variety of the ADOS. Dr. Hagen also failed to reconcile how she now had evidence supportive of autistic-like behaviors in the areas of communication, socialization and restricted interests, which she had previously found lacking in December 2004.

E. Dr. Hagen also diagnosed Claimant with Moderate Mental Retardation, based on Claimant's low cognitive test scores and her demonstrated serious deficiencies in adaptive functioning, which are both required for such a diagnosis by the DSM-IV.

26. Little evidence was presented regarding Claimant's past mental health treatment. She was seen for individual therapy at the Los Angeles Child Guidance Clinic (LACGC) from approximately 2000 through 2004. The focus and results of that treatment were not established. Claimant was prescribed Ritalin for a few months in 1999 and/or 2000, but, as described above, her grandmother decided to stop the medication. According to some of the records, the decision to discontinue the Ritalin was because Claimant experienced visual hallucinations. Although some of the above-described Service Agency employees and consultants thought Claimant had a family history of mental disorders, such was not established and those notations were therefore speculative.

27. Claimant is currently being treated at the Augustus F. Hawkins Community Mental Health Center (a Los Angeles County facility, referred to hereinafter as the Hawkins Center). She was initially referred there on April 14, 2006, to reduce her sexual acting out behaviors and to increase her expression of appropriate emotions with others. Claimant has been attending individual therapy on a regular basis from then until the present time with Clinical Psychology Intern Jennifer Hung, M.S. Claimant's progress in therapy has been described as "limited due to her cognitive limitations."

28. A. On May 1, 2006, Ms. Hung referred Claimant for a psychological evaluation to be done within the Hawkins Center, in order to assess her level of cognitive functioning “especially as related to her reoccurring sexual behavior.” The evaluation was conducted by Jeanne Clevenger, M.A., a psychological extern, supervised by Chad Brinderson, Ph.D., a clinical psychologist. Ms. Clevenger interviewed Claimant and her grandmother, observed Claimant’s behaviors over four different days in May 2006, administered some tests, and reviewed some of the prior evaluations described above.

B. In her undated report, completed on a date on or after May 22, 2006, Ms. Clevenger noted that Claimant’s full scale IQ from the WISC-IV test she had administered was in the extremely low range of intellectual functioning, although she did find that Claimant was strong in verbal comprehension relative to other parts of the test. Ms. Clevenger also noted that Claimant’s performance on the Woodcock Johnson-III Achievement exam was also in the extremely low range, and that across all clusters of the test Claimant performed at a kindergarten or first grade level. Claimant’s performance on the Adaptive Behavior Assessment System (Second Edition) was described as also falling in the extremely low range of adaptive functioning.

C. Ms. Clevenger also administered a number of tests designed to assess Claimant’s emotional functioning, such as the Child Depression Inventory, the Tell-Me-A-Story projective test, and the Achenbach test. Ms. Clevenger found it difficult to assess this area due what she termed as “Claimant’s low intellectual capabilities” that she thought limited Claimant’s ability for self-awareness or self-expression. However, Ms. Clevenger summarized the results of those tests as still indicating that Claimant displayed some internalized emotional problems, such as withdrawn/depressive symptoms and anxiety. Although she stated it was difficult to locate the exact etiology, Ms. Clevenger stated the symptoms may reflect Claimant’s past physical and sexual abuse. In any event, she stated that Claimant’s low intellectual capabilities were “exasperating” her sexual behaviors.

D. Based on the low cognitive and adaptive function test scores, and the test results similar to those previously obtained by Dr. Hagen, Ms. Clevenger diagnosed Claimant with mental retardation. Claimant’s retardation was described as both “mild” and “moderate.” A review of the entire report indicates that Ms. Clevenger concurred with Dr. Hagen’s prior diagnosis of Moderate Mental Retardation. Ms. Clevenger expressly ruled out a psychotic disorder, because Claimant did not present to her as having auditory hallucinations or other disorganized behaviors.

E. Ms. Clevenger also ruled out autism due to a lack of autistic-like behaviors for Claimant before age three (required by the DSM-IV for such a diagnosis), but instead felt a PDD NOS diagnosis was appropriate because Claimant did have marked impairments in communication and socialization. Ms. Clevenger also concluded that Claimant’s behaviors previously diagnosed as ADHD were better explained by her PDD NOS diagnosis and an impulse-control disorder.

29. Claimant's grandmother testified at the hearing. She stated that her granddaughter has not had any visual or auditory hallucinations since she stopped taking Ritalin in 2000. It is her observation that Claimant occasionally talks to herself, but is not carrying on a conversation with an imaginary person when doing so. Claimant's grandmother also sharply disputes Dr. Walker's testimony that at her evaluation Claimant was either talking to herself or somebody not in the room. Although Claimant's grandmother admitted that Claimant had previously told Service Agency personnel that she heard voices in her head, Claimant's grandmother believes that Claimant was only indicating that she had previously heard voices but not that she was still hearing them contemporaneous to that intake interview.

Overall Findings Regarding Claimant's Current Developmental Condition

30. It was not established that Claimant is schizophrenic. The only health care professionals who have diagnosed Claimant with schizophrenia are those affiliated with the Service Agency. Those experts had limited contact with Claimant. No such diagnosis has been made for Claimant by the CUSD's school psychologist who evaluated Claimant's eligibility for special education services, or those who have evaluated or treated Claimant at the King/Drew Medical Center, the Hawkins Center, or the LACGC. The later experts have been more intimately involved in Claimant's treatment and care than the Service Agency personnel. The later experts were made aware of the reports of Claimant's past hallucinations or instances of talking to herself, but they still have not diagnosed her with schizophrenia. In addition, the evidence regarding whether, when and why Claimant has had hallucinations is sharply in dispute, so much so that a diagnosis of schizophrenia on that evidence is not persuasive. For example, Dr. Walker's observations of Claimant during her evaluation were directly contradicted by Claimant's grandmother; Claimant also denied having any hallucinations at that time. During her testimony, Claimant's grandmother linked the hallucinations to medications Claimant was taking. For these reasons, the opinions by the Service Agency experts that Claimant is schizophrenic are not persuasive.

31. It was not established that Claimant is autistic. Dr. Walker's opinion that Claimant is not autistic was persuasive, for the reasons explained above in Factual Findings 17 and 23. Moreover, the diagnoses by Claimant's experts Drs. Gonzalez and Hagen that Claimant is autistic were not persuasive. Dr. Gonzalez's report was too vague and did not contain sufficient detail to support her diagnosis of autism. It also appears from her report that Dr. Gonzalez was relying, in part, on the assumption that Claimant had previously been diagnosed as autistic, which is not supported by the record. Dr. Hagen's report was similarly vague and failed to reconcile how she was able to make a diagnosis of autism so soon after previously commenting that she could not make such a diagnosis. There is also a lack of evidence in the record of documented behaviors by Claimant that sufficiently meets the required criteria for a diagnosis of autism pursuant to the DSM-IV, as described by Dr. Walker. Claimant's expert from the Hawkins Center, Ms. Clevenger, similarly described in her report that Claimant did not exhibit a sufficient number and variety of such behaviors to make a proper diagnosis of autism pursuant to the DSM-IV.

32. Ms. Clevenger's opinion that Claimant is mentally retarded is more persuasive than the contrary opinions offered by Dr. Walker and the other Service Agency experts, for the following reasons:

A. The opinions of Dr. Walker and her colleagues depend on the faulty assumption that Claimant's cognitive and functional limitations are due to schizophrenia.

B. Unlike the other health care professionals who offered opinions in this case, Ms. Clevenger's overall evaluation of Claimant is more consistent with the record. For example, while Ms. Clevenger acknowledged many of Claimant's behaviors that were consistent with autism, she credibly admitted in her report the lack of sufficient evidence for an autism diagnosis and therefore refused to make one. Similarly, Ms. Clevenger persuasively linked Claimant's understandable emotional problems (such as sexually acting out and talking to herself) to her history of past physical and sexual abuse, instead of concluding that Claimant is schizophrenic.

C. There is other factual support for Ms. Clevenger's diagnosis. For example, Dr. Hagen had similarly made a diagnosis of mental retardation, based, in part, on test scores showing an IQ for Claimant well below the cut-off of 70 for mental retardation. Ms. Clevenger's report indicates that her testing also yielded cognitive scores in the range of mental retardation. The CUSD Psychologist, Mr. Ray, assessed Claimant as needing special education services due to cognitive impairments. Mr. Ray's general instruction recommendations included breaking larger tasks into smaller ones, arranging tasks from simple to complex, using explicit step-by-step instruction, etc. Based on the experience of the ALJ in hearing and evaluating eligibility cases such as this, those types of recommendations are similar to those made for a person with mental retardation or perhaps a fifth category condition. The IQ scores yielded by the Service Agency's first retained expert, Dr. Kelly, were just above the cut-off of 70 for mental retardation. In the ALJ's experience, the lower part of that test's error range for Claimant would begin below 70.

D. As discussed in greater detail below, it was established that Claimant has significant impairments in adaptive functioning in a variety of areas in her life, a requirement for a diagnosis of mental retardation pursuant to the DSM-IV. While the Service Agency does not dispute that Claimant's adaptive functioning is significantly impaired, it contends that situation is caused by schizophrenia and not retardation.

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*Findings Regarding the Extent of Claimant's Disability*⁵

33. Receptive and Expressive Language. Claimant has a significant functional limitation in this area. Mr. Ray concludes in his report documenting his November 1999 special education assessment of Claimant specifically that she has significant deficits in expressive, receptive and written communication. Dr. Kelly noted in her report that Claimant's score on the communication domain of the Vineland test fell within the mildly delayed range. Dr. Walker noted in her report that Claimant's score on the communication skills part of the Vineland yielded a domain in the moderately delayed range. Both Dr. Hagen and Ms. Clevenger found significant deficits in Claimant's communication skills.

34. Learning. Claimant has a significant functional limitation in this area. She has received special education services since 2000, based on a stated need for mild to moderate services. Ms. Clevenger visited Claimant in her special education classroom, and opined that it appeared to be an appropriate educational setting for her. Dr. Hagen described Claimant's academic abilities as poor. Dr. Walker described Claimant's academic skills, per the WRAT-3 test, as demonstrating reading recognition and math skills in the borderline delayed range and at the kindergarten level, and spelling skills in the mildly delayed range and at a kindergarten level.

35. Self-care. Claimant has a significant functional limitation in this area. Her grandmother describes Claimant's self-care skills as no greater than a two-year old. Claimant cannot use the kitchen, flush the toilet, or dress herself. She puts on her clothing "backwards," e.g. her underwear over her clothing or her shoes on the wrong feet. She needs assistance in most of her grooming needs. Claimant does not recognize dangers. She would eat food off the ground and would eat food so hot as to burn her mouth if not restrained. Dr. Walker noted in her report that Claimant's self-help skills score on the Vineland yielded a domain in the severe range. Dr. Hagen and Ms. Clevenger also note Claimant's low ability in this area.

36. Mobility. It was not established that Claimant has a significant functional limitation in this area. Although her gait at times can be awkward or clumsy, she has full use of all her extremities and no physical limitations have been noted. Mr. Ray described Claimant's sensory motor skills in 2000 as being within an appropriate age range.

37. Self-direction. There is insufficient evidence in the record to establish that Claimant has a significant functional limitation in this area, namely because there is a lack of discussion about this area in the various reports or in the testimony of the witnesses.

38. Capacity for Independent Living. This area is not applicable to Claimant, who is a young child not expected to live independently at this time.

⁵ These findings track the categories set forth in the pertinent statutes and regulations, as discussed in more detail below in Legal Conclusion 4.

39. Economic self-sufficiency. This area is not applicable to Claimant, who is a young child not expected to be economically self-sufficient at this time.

40. Claimant's diagnosis of mental retardation establishes that her cognitive abilities are impaired to a major extent.

41. Claimant's social skills are also impaired to a major extent. Mr. Ray described Claimant's socialization skills as being significantly below age expectations. Ms. Clevenger noted in her report that Claimant appeared during her evaluation to be awkward, withdrawn and to lack appropriate social boundaries. Ms. Clevenger also described her Vineland test as revealing a low score in social skills. Dr. Walker described her Vineland test as yielding a domain in the moderate range of impairment for social skills. Claimant was unable to name for Dr. Walker any friend at school. Claimant and her grandmother also reported to Dr. Walker that Claimant has few friends and is lonely. Claimant's grandmother also reported to Service Agency intake personnel in 2005 that Claimant has few friends and must be supervised during social interaction because she tends to be aggressive with other children. Dr. Hagen found that Claimant's social judgment and ability to form positive social relationships are impacted by her developmental disability and that Claimant has difficulty integrating herself into a peer group.

42. It was established that Claimant needs inter-disciplinary team coordination of services. As noted above, she already requires special education services at school. Dr. Hagen recommends social skills training for Claimant to facilitate peer group interaction, in addition to other services that she believes the Service Agency should provide to coordinate Claimant's needs at home and school. Ms. Clevenger similarly recommends that Claimant receive coordinated services from the Service Agency.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)⁶ An administrative hearing is available under the Lanterman Act to appeal a regional center's denial of a service request. (§§ 4700-4716.) Claimant properly appealed from the Service Agency's denial of her service request and thus jurisdiction was established. (Factual Findings 1-5.)

2A. Where an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case requires proof to a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute (including the Lanterman Act) requires otherwise.

⁶ All further statutory references are to the Welfare and Institutions Code, unless otherwise noted.

2B. With regard to the issue of one's eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (*Mason vs. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.) In *Mason*, the court focused on whether the claimant's expert witnesses' opinions on eligibility "sufficiently refuted" those expressed by the regional center's experts that claimant was not eligible. (*Id.*, at p. 1137.)

2C. Based on the above, Claimant in this case has the burden of proving by a preponderance of the evidence that her evidence regarding eligibility is more persuasive than that adduced by the Service Agency.

Claimant has a Qualifying Condition

3A. An applicant is eligible for regional center services under the Lanterman Act if it can be established that she is suffering from a substantial disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or what is referred to as the "fifth category" (a condition similar to mental retardation or which requires treatment similar to that required by those who are mentally retarded). (§ 4512, subd. (a).) A qualifying condition must also onset before one's 18th birthday and continue indefinitely thereafter. (§ 4512; Cal. Code Regs., tit. 17, § 54000, subds. (a), (b)(1), and (b)(3).)

3B. In this case, while it was not established that Claimant is autistic, it was established by a preponderance of the evidence that she is mentally retarded. Claimant's experts Dr. Hagen and Ms. Clevenger have both diagnosed Claimant with mental retardation. Their diagnoses are supported by observations of behaviors and test scores consistent with mental retardation. In particular, the opinion of Ms. Clevenger that Claimant is mentally retarded is more persuasive than the opinions of the Service Agency experts that she is not. Other credible evidence supports the finding that Claimant is mentally retarded. For example, she has required special education services since 1999 due to very poor academic performance explained by significant cognitive limitations. Claimant's current mental health experts have opined that those cognitive problems are limiting the efficacy of her counseling. The opinions expressed by Claimant's expert on the issue of mental retardation, Ms. Clevenger, sufficiently refutes the opinions expressed by the Service Agency's experts. (Factual Findings 6-32.)

Claimant is Substantially Disabled

4A. As referenced above, the qualifying condition must also cause a substantial disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b)(3).) A "substantial disability" is defined by California Code of Regulations, title 17, section 54001, subdivision (a), as follows:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.⁷

4B. In this case, applying the evidence to the above-described categories reveals Claimant is substantially disabled by virtue of her mental retardation. First, Claimant's condition has resulted in a major impairment of her cognitive and social functioning, as required by California Code of Regulations, title 17, section 54001, subdivision (a)(1). Second, there currently exists a significant functional limitation in three of the areas of major life activity listed in regulation section 54001, subdivision (a)(2), i.e. receptive and expressive language, learning, and self-care. Third, Claimant requires interdisciplinary planning and coordination of special or generic services to assist her in achieving her maximum potential. (Factual Findings 33-42.)

5A. Excluded from eligibility are handicapping conditions that are solely psychiatric disorders, learning disabilities and/or disorders solely physical in nature. (Cal. Code Regs., tit. 17, § 54000.) If a claimant's condition is *solely* caused by one or more of these three "handicapping conditions," she is not entitled to eligibility.

5B. "Solely psychiatric disorders" are defined as "impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

⁷ Section 4512, subdivision (l), defines "substantial disability" similar to that of California Code of Regulations, title 17, section 54001, subdivision (a)(2).

5C. In this case, it was not established that Claimant is schizophrenic. The Service Agency's expert witnesses' opinions on that issue were not persuasive. Although Claimant obviously has some residual problems from the physical and sexual abuse inflicted on her when she was an infant, it was not established that those problems are solely the cause of her intellectual or social functioning. In fact, according to her mental health care counselor, Ms. Hung, it is Claimant's cognitive impairments that are creating a problem in treating her residual emotional problems created by the past abuse. (Factual Findings 23-32.)

6. Claimant has met her burden of establishing by a preponderance of the evidence that she is eligible for regional center services due to mental retardation and that her developmental disability of mental retardation is substantially disabling. (Factual Findings 1-42.)

ORDER

Claimant APRIL T. established that she is eligible for services from the SOUTH CENTRAL LOS ANGELES REGIONAL CENTER. Claimant's appeal of the Service Agency's determination that she is not eligible for services is therefore GRANTED.

DATED: December 4, 2006

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. This decision may be appealed to a court of competent jurisdiction within 90 days of receipt of notice of this decision.